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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,979	11/26/2001	Ewa Kolby-Falk	000500-271	4292

7590

03/17/2004

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EXAMINER

REICHL, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 03/17/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/991,979

Applicant(s)

KOLBY-FALK, EWA

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

#### *Priority*

1. The amendment to paragraph 0001 did not take into account the amendment filed in the transmittal papers of 11-26-01, i.e. did not comply with 37 CFR 1.121 effective 7-30-03. As a courtesy to Applicant the necessary changes were made in red ink to bring the amendment into compliance.

### *Drawings*

2. The drawings were received on 12-29-03. These drawings are not approved. The change to Figure 5 was not made to Figure 6 also.

3. The drawings are objected to because in Figure 2, the line from 104 should lead to the absorbent. (It is noted that the line from 102 should then lead to the upper layer). In Figure 1 the line from 113 should be an arrow. Also 125 should extend all the way to the structure it denotes. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. It is noted that the marked up copies of the drawings are not labeled in accordance with 37 CFR 1.121 effective 7-30-03, i.e. "Annotated Marked-up Drawings".

***Description***

5. The use of the trademark VELCRO(R), paragraph 0030, has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should either be in all capital letters or with a symbol but not both.

6. The disclosure is objected to because of the following informalities: what is element 513 in Figures 5 and 6?

Appropriate correction is required.

***Claim Language Interpretation***

7. Claim 15 does not invoke 35 USC 112, sixth paragraph, because it does not employ proper “means plus function” form and/or includes a recitation of sufficient specific structure to perform the claimed function.

***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Lindsay et al ‘955.

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Claims 1, 15 and 16: see Figure 4, liquid permeable top side or liquid permeable means or liquid permeable portion is 12 and 42, liquid impermeable layer is 14, absorption body is at least 18 which is formed by a preformed dehydrated hydrogel, see col. 22, lines 18-24, col. 28, lines 43 et seq (and thus Kellenberger '343, e.g., at col. 7, lines 42-55 thereof) which as a result of the performing, when wetted, swells in the thickness direction and forms an elevation portion on the top side of the product, see col. 23, lines 36-54, col. 27, line 15-col. 28, line 18. The hydrogel is formed through a part of the liquid permeable topside, means or portion, 42 (Note opening between ends of 44 make 42 permeable), see Figures and portions already cited. With regard to claim 16, also see col. 15, lines 1-2. It is noted that the claims do not require the liquid permeable topside, means or portion be only a single sheet nor that the hydrogel forms through the entire thickness thereof, only has to form through a part thereof, i.e. 42.

Claim 2: see also col. 34, line 8-16. It is noted that the claim does not require the preformed dehydrated hydrogel has the sticky surface.

Claim 3: see '343 again at col. 5, lines 17-28.

Claims 4-8: see col. 24, line 62-col. 25, line 9 and col. 29, lines 21-39 and col. 30, line 11.

Claims 9-14: see col. 23, lines 36-39 and col. 24, lines 4-31.

### ***Response to Arguments***

10. Applicant's remarks with regard to matters of form have been considered but are either deemed moot because the issue has not been reraised or is deemed not persuasive for the reasons set forth supra. With regard to Applicant's remarks with regard to the Lindsay et al

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reference, such remarks have been considered but are deemed not persuasive in that such remarks are narrower than the claim language which only requires the hydrogel formed through a part of a liquid permeable section and the teachings of Lindsay et al which teaches such, see rejection supra, elements 18 and 42. Even if Applicant's were to set forth the hydrogel forming through the entire thickness of a liquid permeable surface which forms a body facable surface of the product, see the prior art cited infra.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Figures and paragraph bridging pages 16-17 of '057 and Figures and page 15, line 33-page 17, line 9 of '463.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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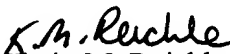
Any new grounds of rejection were necessitated by the amendment to each of the independent claims.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 8, 2004